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July 12, 2006

***VIA HAND DELIVERY***

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

*Re: NSTAR Electric – Default Service Rates  
Reply to Opposition to Request for Disclosure of Information*

Dear Secretary Cottrell:

We are writing of behalf of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), to seek the Department's leave to reply to the July 7, 2006 Opposition (the "Opposition") of NStar Electric ("NSTAR") to Cape Light Compact Request for Disclosure of Information.

In the Compact's request (the "Request"), filed June 21, 2006, the Compact asked the Department of Telecommunications and Energy (the "Department") to (1) deny protective treatment for information regarding the proposed charges for "uplift costs" included in the default service rates approved by the Department on June 1, 2006, (2) disclose such information to the public and (3) disclose to the public any information collected or analyses performed by the Department to satisfy itself that the estimated uplift costs included in the default service rates are in fact reasonable.

The Compact seeks leave to reply to the Opposition in order to correct the procedural record, to respond to the mischaracterization of the Request and to respond to the arguments made in the Opposition. In the event that leave is granted by the Department, the Compact states as follows:

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**I. THE REQUEST WAS NOT FILED WITHOUT LEAVE OF THE DEPARTMENT**

Prior to submitting the Request, the Compact informed the Department that the Compact wished to seek the disclosure of the Uplift Adder (as defined in the Request), inquired about the status of NSTAR's Motion for Protective Treatment of Confidential Information (the "Motion") and inquired further about the appropriate procedure for requesting disclosure of the Uplift Adder. The Hearing Officer informed the Compact that the Motion was still pending and that it would be appropriate for the Compact to request that the Department deny the Motion in whole or in part and disclose the Uplift Adder and certain related information. Accordingly, the Compact's Request was not filed without leave of the Department.

**II. NSTAR'S OPPOSITION FAILS TO JUSTIFY CONFIDENTIAL TREATMENT OF THE UPLIFT ADDER**

**A. NSTAR's Opposition and Comments by Certain Wholesale Suppliers Are Entirely Off the Mark**

On some level, NSTAR appears to recognize that the Compact narrowly seeks the disclosure of the Uplift Adder. E.g., Opposition at 7. Indeed, it should be beyond dispute that the Compact has specifically disavowed any intent to seek the disclosure of actual bid terms. In the Request, the Compact requested disclosure of NSTAR's "Uplift Adder and any supporting information (that does not contain sensitive supplier price data)." Request at 8. Moreover, the Compact's filing specifically states that "[i]t is understandable that bid prices themselves should be 'protected from public disclosure to protect [NSTAR's] future negotiating position when seeking to procure Default Service for its customers.'" Id. at (quoting Affidavit of James Daly ¶ 7).

Nonetheless, NSTAR continues to blatantly mischaracterize the Request as seeking to "allow[] bid terms to become public." Opposition at 9. Each of the supporting affidavits and statements that NSTAR has aggressively assembled and attached as exhibits to the Opposition suffer from the same defect, as each alleges negative consequences if a particular supplier's "prices and bid terms become publicly available." Affidavit of Ronald E. Armstrong ¶ 9 (Dominion Energy Marketing, Inc.); Affidavit of Glen Grayeb ¶ 9 (Sempra Energy Trading Corp); Affidavit of Michael E. Hachey ¶ 9 (TransCanada Power Marketing Ltd.); Letter dated July 6, 2006 from Deborah Hart, Morgan Stanley Capital Group Inc. to NSTAR at 2. The same is true of each of the nearly identically worded statements submitted directly to the Department by other suppliers. Letter dated July 6, 2006 from David Hannan, Esq., Constellation Energy Commodities Group to the Department at 2 (alleging negative consequences if its "prices

and bid terms become publicly available”); Letter dated July 6, 2006 from J. Aron & Company to the Department at 1 (same); Letter dated July 6, 2006 from Clarence J. Hopf, Jr., PPL EnergyPlus, LLC to the Department at 2 (same). Because the Compact does not in fact seek the disclosure of any supplier’s prices or bid terms, NSTAR’s opposition and the affidavits and statements filed by these wholesale suppliers are wholly off the mark.

**B. NSTAR Still Fails to Establish That the Uplift Adder is Competitively Sensitive Information**

NSTAR appears to argue that the Uplift Adder included in the default service rates is competitively sensitive merely because it is “based on” information provided by bidders. Opposition at 7. That simply cannot be enough to justify evading the Public Records Act and thwarting the Commonwealth’s strong policy in favor of disclosure. An argument that the Department must treat as confidential all information calculated by NSTAR based in part on information culled from supplier bids would lead to absurd results. For example, NSTAR could then submit its proposed default service rates to the Department on a confidential basis with the argument that the rates themselves (which include wholesale costs) are “based on” information provided by bidders and should only be disclosed to the public after approval by the Department. Notably, not a single affidavit or statement submitted by a supplier in support of NSTAR’s opposition alleges that the Uplift Adder (as opposed to each supplier’s individual prices and bid terms) constitutes competitively sensitive information. As stated in the Request, “assuming that the Uplift Adder represents the difference between one or more bids that included uplift costs and one or more bids that excluded uplift costs, the difference itself is not a ‘market price’ but rather a relationship calculated by NSTAR that does not reveal – and cannot be used to reveal – any particular bid price.” Request at 8. See also Letter dated July 7, 2006 from Cynthia A. Arcate, Division of Energy Resources to the Department at 2 (stating that “there is no way [NSTAR’s uplift cost proxy] could be considered market sensitive or proprietary”). In short, the amount of NSTAR’s Uplift Adder does not constitute competitively sensitive supplier data and need not be kept confidential.

**C. NSTAR Fails to Show that the Public Interest Favors Secrecy**

NSTAR attempts to argue that the competitive bidding process and ultimately the public will be harmed by disclosure of the Uplift Adder but these arguments lack any factual basis and are propped up by statements of suppliers that incorrectly assume that the Compact is seeking disclosure of their bids. Opposition at 9-11. NSTAR’s leading argument is that “allowing bid terms to become public would place particular bidders at a disadvantage vis-à-vis their market competitors, which would place the Companies’ customers at a disadvantage in future Basic Service supply solicitations.” Id. at 9. Of course, the Compact is not seeking the disclosure of “bid terms” nor does NSTAR

Mary Cottrell, Secretary  
July 12, 2006  
Page 4

explain why or how disclosure of NSTAR's Uplift Adder would place any particular bidder at a disadvantage.

Likewise, NSTAR's "scrutiny" of the reasons why disclosure of the Uplift Adder is in the public interest is itself misguided. The fact that the Department and the Attorney General are charged with protecting consumer interests, Opposition at 11, does not undercut the fact that the Compact as well represents the interests of consumers on Cape Cod and Martha's Vineyard. See, e.g., D.T.E. 00-47 (Aug. 10, 2000) (noting that "[t]he Compact was formed in 1997 for the purpose of representing 'consumer interests in the emerging competitive markets for electricity . . . and to advance consumer protection for the residents and businesses of Cape Cod and the Vineyard.'" (quoting the Compact's Aggregation Plan).

Moreover, the record shows that the Department (in order to comply with its own procedures) was in great haste to review NSTAR's filing and the Department's order does not explain how the Department determined that the Uplift Adder represents a reasonable estimate of uplift costs. In addition, to the Compact's knowledge, the Attorney General did not file anything in this proceeding, much less anything indicating the extent to which his office had reviewed NSTAR's estimated uplift costs. The interests of consumers will be well served by disclosing the Uplift Adder.

NSTAR also presents a tortured argument as to why the interests of the Compact itself would not be served by disclosure of the Uplift Adder. Opposition at 11-12. The Compact is obviously best positioned to know its own interests and believes its interests would be best served by disclosure of the Uplift Adder. More fundamentally, however, it is important to note that NSTAR mistakenly assumes that a party seeking disclosure of information must only argue on its own behalf. That is not the case. The issue is whether "disclosure of the disputed information benefits the *public* interest," Hearing Officer's Ruling on the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50 at 4 (1996) (emphasis added) (citing The Berkshire Gas Company, et al., D.P.U. 93-187/188/189/190 at 16 (1994)) – not whether disclosure would benefit the interest of a particular stakeholder. And as the Department has noted, because the presumption in favor of disclosure is a strong one, the weight of the public interest need not be "compelling" in order to justify disclosure. Verizon New England, D.T.E. 01-31-Phase I at 4 (Aug. 29, 2001).

**D. NSTAR's Concerns Regarding a Confidentiality Agreement Are Unfounded**

The Compact requested that, in the event the Department decides not to disclose the Uplift Adder publicly, the Department nonetheless require disclosure of the

Mary Cottrell, Secretary  
July 12, 2006  
Page 5

information to the Compact subject to an appropriate confidentiality agreement. Request at 11. NSTAR claims that this would be an unworkable alternative "because of the Compact's affiliation with a wholesale supplier" and "the possibility that the Compact's wholesale supplier may gain access to bid information from NSTAR Electric's RFP." Opposition at 14. The Compact does not have any affiliation with a wholesale supplier (the Compact has arranged for Consolidated Edison *Solutions*, Inc., a *retail* supplier, to provide competitive retail supply to consumers within the Compact's aggregation program). In any event, while the Compact favors public disclosure of the Uplift Adder, the Compact nonetheless reiterates that obtaining the information subject to an appropriate confidentiality agreement would be a second-best alternative and the Department should assume that the Compact would indeed comply with the terms of that confidentiality agreement.

Thank you for your attention to this matter.

Sincerely,

THE CAPE LIGHT COMPACT

By its attorneys,



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Mary Cottrell, Secretary  
July 12, 2006  
Page 6

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